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- * An election petition must be dismissed if the mandatory requirements enjoined by Sec. 83 of the Representation of the People Act, 1951 to incorporate the material facts and particulars relating to alleged corrupt practice in the election petition are not complied with. 567
- * Civil Procedure Code, 1908, is comprehensive and exhaustive. 513

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even where mere 'commercial speech' is concerned, the First Amendment permits restraints on speech only when they are narrowly tailored to advance a legitimate governmental interest." Even though the stated governmental interest was the protection of investors from "scoundrels and swindlers" the measures taken were "extreme."

The Court's commercial speech cases have "consistently rejected the proposition that such drastic prohibitions on speech may be justified by a mere possibility that the speech will be fraudulent." Justice White's words in *Lowe* strike a resonant chord with the current SEC investigations into rumor-mongering. Simply because rumors and gossip could be used for market manipulation for personal gain does not mean that the agency should be allowed to prohibit dissemination of good faith opinions and beliefs about companies.

Conclusion

Efficient markets require the free dissemination of information. The flow of information, when communicated responsibly, is an essential element of efficient markets. Rumours are legitimately circulated through the financial system for a variety of reasons. It is customary for market participants to discuss rumours when accounting for the source of market volatility; when offering an objective assessment of a rumour's likelihood to a client; and when attempting to better understand observable market behaviour.

At times, it is virtually impossible not to discuss rumors in fielding investor questions about the causes of otherwise unexplained market volatility. In such circumstances, the ability to freely discuss rumors with investors or other market professionals for the purpose of debunking them can be enormously helpful to investors and issuers alike, and highly

beneficial to the efficiency of the market. On the other hand an excessively zealous crackdown on rumors could inhibit the flow of information in the market and thereby make the markets less efficient. Therefore, it is all the more required that diligent market analysis and its dissemination should be encouraged.

Economic offenders have exploited weaknesses in almost all areas of economic activity and siphoned off thousands of crores. Their depredations will continue till the law makers plug loopholes in the affected system. But the economic offenders, as they have the knack of exploiting weaknesses in any system either traverse a new territory or subvert the system which is their specialized field. In the recent past alone, scams have cost the exchequer and millions of Indians, astronomical sums of money. These crimes have the propensity to cause havoc and undermine not only the economy of the country, but the national security as well. Therefore, SEBI should invoke all the available penal provisions under different statutes and take stringent measures to stop these price manipulations through rumor-mongering in the trading system and protect the investors from these 'scoundrels and swindlers'.

CRIMINAL LIABILITY FOR MIS-STATEMENTS IN PROSPECTUS " A STUDY IN THE LIGHT OF DHARMENDRA KUMAR LILA'S CASE*

By

Dr. Mukund Sarda"

1. Section 62 of Indian Companies Act, 1956 provides as follows:-

* *Dharmendra Kumar Lila v. Registrar of Companies* - (2010) 104 SCL 275 Delhi

* Principal & Dean, Bharatiya Vidya Peet New Law College, Pune

"62. Civil liability for mis-statements in prospectus – (1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein, this is to say –

- (a) every person who is a director of the company at the time of the issue of the prospectus;
- (b) every person who has authorized himself to be named and is named in the prospectus either as a director, or as having agreed to become a director, either immediately or after an interval of time;
- (c) every person who is a promoter of the company; and
- (d) every person who has authorized the issue of the prospectus :

Provided that where, under Section 58, the consent of a person is required to the issue of the prospectus and he has given that consent, or where, under sub-section (3) of Section 60, the consent of a person named in a prospectus is required and he has given that consent, he shall not, by reason of having given such consent, be liable under this sub-section as a person who has authorized the issue of the prospectus except in respect of an untrue statement, if any purporting to be made by him as an expert".

This section makes it clear that even if a 'Promotor' is not chosen to become a director, he is liable for any such loss or damage.

2. It is a Cordial principle of interpretation of a penal statute that a

'mischief' should not be extended and a 'penalty' should not be enlarged and penal statutes should be construed according to its plain, natural and grammatical meaning.¹ No penal consequence will be inferred from a given provision, unless the language of the provision plainly leads to that conclusion.² A plain reading of Sec. 62 of the Indian Companies Act, 1956³ speaks only of civil liability to pay compensation in cases of mis-statements made in the prospectus. No criminal complaint under Sec. 62 of the Act is maintainable as laid down in *Rajeev Shukla v. Registrar of Companies*⁴ and *Manju Yadav v. Registrar of Companies*.⁵ Actus facit reum, nisi mensit rea – (no mens era, no crime) is not relevant in the case of *Dharmendra Kumar Lila*,⁶ as the prosecution itself is void on account of lack of sanction from the competent authority to support it under Sec. 68 of the Act. In fact the 'mens rea doctrine' has been excluded in the area of economic crimes and departmental penalties or crimes of anti-social nature.⁷

3. The question of applying the principle 'actus curiae neminem gravabit' – (an act of Court shall prejudice no one) never arose in the case of *Dharmendra Kumar Lila*, as no injustice has been caused by Court's delay but only to the executive i.e., competent authority under the Act to sanction the prosecution. In fact, there is a fit case for the Court to order the competent authority to provide additional

1. *Tolaram Relumal v. State* ILR (1953) Bom. P.1007

2. *Alamgiri v. State of Bihar* (1959) Sup. 1 SCR P.464

3. 'Act' refers to Indian Companies Act, 1956 throughout this study.

4. (2006) (1) 35 DLT P.599

5. (2007) 98 DRJ P.342

6. SUPRA

7. *R.S.Joshi v. Ajit Mills Ltd.*, AIR 1977 SC P.2279 also see *Commissioner of Income Tax, Patiala v. Patram Dass Raja and others* AIR 1980 Punjab & Haryana (1) Full Bench (FB)

compensation in lieu of prosecution failure for want of sanction, for the loss sustained by the parties. This would be consistent with the principles of victimology. Even if Sec. 62 of the Act is considered as a remedial statute and must be given widest operation which the language used in the provision permits,⁸ there is no scope for a remedy by way of criminal prosecution except a civil remedy to compensate. Even if the Act read as a whole to note the legislative purpose,⁹ it is abundantly made clear that no criminal prosecution is maintainable under Sec. 62 and sanction from competent authority is required for prosecution under Sec. 68 of the Act.

4. For the competent authority not taking its tasks seriously¹⁰ by not getting prior sanction, the aggrieved party should not be made to suffer and needs adequate relief which the Court ought to have granted. Merely quashing the criminal prosecution confers the relief only to the company and causes injustice to the aggrieved parties (as in the instant case, *Supra*, by making mis-statements in the prospectus a sum of ₹ 210 lakhs was collected from the public issue and the company failed to fulfil the promise made in the prospectus). Aggrieved parties in terms of Sec. 62 of the Act refers to every person who has subscribed for shares or debentures on the faith of prospectus and loss or damage sustained by such mis-statements in the prospectus by all such subscribers.

5. In conclusion, it may be stated that decision rendered in *Dharamendra Kumar Lila's case*¹¹ needs reconsideration, with reference to additional compensation to be

given, in lieu of prosecution failure on account of want of sanction.

COMPANIES BILL 2011- HIGHLIGHTS

By

Dr. T. Padma., LL.M., Ph D (Law)
LLD Scholar (A P Law University)
kethepadma@gmail.com

BACKGROUND

In India, the Companies Act, 1956, is the most important piece of legislation that empowers the Central Government to regulate the formation, financing, functioning and winding up of companies. The Act contains the mechanism regarding organizational, financial, and managerial and all the relevant aspects of a company. It provides for the powers and responsibilities of the directors and managers, rising of capital, holding of company meetings, maintenance and audit of company accounts, powers of inspection, etc. The Companies Act, 1956 has been the founding pillar on which our corporate legal framework builds upon. It is a formidable, comprehensive document requiring a great deal of patience, time and perseverance to understand the intricacies of the subject. The Act came into force on 1st April, 1956. Thereafter, the Companies Act, 1956 has undergone several changes by amendments.

The Companies Act is administered by the Central Government through the Ministry of Corporate Affairs and the Offices of Registrar of Companies, Official Liquidators, Public Trustee, Company Law Board, Director of Inspection, etc. The Registrar of Companies (ROC) control the task of incorporation of new companies and the administration running companies.

8. *Payalben Tayeshbhai Yagnic v. Jayashbhai G. Yagnik* (2004) 1 ACC P.559 (Guj)

9. *N.K. Jain v. C.K. Shah* (1991) Cr.L.J P.1347

10. *Aslam Bahalal Desai v. State of Maharashtra* AIR 1993 SC P.1.

11. SUPRA